

*In the Matter of Michael Lonergan
and Scott Nass, County Correction
Sergeant (PC2530E), Union County*
DOP Docket Nos. 2004-1063 and 2004-1486
(Merit System Board, decided March 24, 2004)

Michael Lonergan and Scott Nass appeal the determination of the Division of Selection Services which denied their requests for a make-up examination for County Correction Sergeant (PC2530E), Union County.

By way of background, the promotional announcement indicated that the exam was tentatively scheduled for August 2003 and candidates would be notified of the date, time and place of the exam. The Orientation Guide indicated that make-up exams may be authorized for the following reasons: (1) error by the Department of Personnel or appointing authority; (2) serious illness or disability of the candidate on the test date, provided the candidate submits a doctor's certificate specifying that the candidate was not able to take the test on that day for medical reasons; (3) documented serious illness or death in the candidate's immediate family; (4) natural disaster; or (5) prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation; and (6) other valid reasons. See *N.J.A.C. 4A:4-2.9(a)*.

By notice dated August 25, 2003, candidates were informed that the administration date was rescheduled for September 30, 2003, in order to accommodate summer vacation plans. The notice also indicated that a make-up examination pilot program, which provides the policies and procedures for all public safety exams, went into effect on August 19, 2003 and referred candidates to the Department's website for further details. It is noted that the New Jersey Supreme Court, in *In the Matter of Police Sergeant (PM3776V), City of Paterson*, 176 N.J. 49 (2003), ordered the Department of Personnel, for future exams, to "administer make-up exams that contain substantially different or entirely different questions from those used in the original examination." *Id.* at 66. As a result, the Department of Personnel established a make-up examination pilot program. The pilot program provides that make-up examinations for entry-level and promotional public safety exams may be authorized only in cases of: (a) error by the Department of Personnel or appointing authority; (b) death in the candidate's immediate family as evidenced by a copy of the death certificate; (c) catastrophic illness wherein the candidate has either suffered a life-threatening injury or illness, or requires an extended convalescent period, as evidenced by a doctor's diagnosis and statement, as well as documentation from the candidate's employer noting the candidate's related leave from work; (d) military leave, pursuant to *N.J.A.C. 4A:4-2.9(c)*; or (e) exoneration from pending disciplinary or criminal charges, pursuant to *N.J.A.C.*

4A:4-2.9(d). Make-up candidates are given a make-up exam when the next regularly scheduled exam for their particular title is administered.

On appeal, Mr. Lonergan explains that the announcement indicated that the test was scheduled for August and he had made vacation plans for the end of September. He indicates that he received a notice around September 15 that changed the test date. He argues, "I do not understand how the people who filed for this exam, that was supposed to be given before this program was implemented, could be penalized for a vacation that was preplanned and was also allowable according to the NJDOP guidelines prior to mid August. Ten days prior to a very expensive pre-planned vacation is not sufficient time to try to make alternate plans for this vacation...I would lose over \$4000 if I canceled my trip because it is non refundable when canceled with less than 30 days." In support of his appeal, Mr. Lonergan has submitted a travel reservation confirmation and an itinerary for a cruise from September 27 to October 4.

Mr. Nass indicates that on January 13, 2003, he requested and was granted vacation leave from September 25 through October 11. In support of his appeal, he has submitted a travel invoice dated August 6, 2002, which indicates a cruise sailing date of September 26, 2003, and a travel itinerary for September 25 to October 9. He argues that he should be granted a make-up since the exam administration date was postponed to accommodate the vacation plans of other officers.

CONCLUSION

In the present matter, appellants in good faith made vacation plans based on the tentative August test date. However, due to circumstances beyond their control, the exam was rescheduled to September 30, which conflicted with their prearranged vacation plans. While appellants' requests appear to meet the criteria for a make-up under *N.J.A.C.* 4A:4-2.9(a), due to the postponement, the stricter make-up criteria of the pilot program came into effect and their requests were denied. Under these circumstances, appellants should be granted make-up examinations.

ORDER

Therefore, it is ordered that these appeals be granted and appellants be scheduled for make-up examinations.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.